

Statement of Glenn Marshall
President, Mashpee Wampanoag Tribe
U.S. House Resources Committee
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Mr. Chairman, members of the committee, I thank you for the opportunity to offer these remarks today. I am President of the Mashpee Wampanoags, the largest tribe in the Commonwealth of Massachusetts. Our tribal offices are located on Cape Cod, Massachusetts in the town which bears our name. We are a tribe of 1,468 members, most of whom live in close proximity to our ancestral lands. I present myself today on their behalf in order to share our story. I hope my remarks will not only narrate the historical significance of the Mashpee and our record of service to the United States, but will also demonstrate the compelling factual case for federal recognition. It is my hope that these remarks help present a more clear picture of our tribe's experiences, and, in turn, a clear picture of the reality of the federal recognition process.

The vision of the Pilgrim forefathers disembarking from the Mayflower at Plymouth Rock is the starting point for many people's idea of significant history in the New World. More exactly, it is a pivotal point in American history. It started a new chapter, but it is only a brief moment in a much longer narrative of life on this continent. That story is one of men and women whom have lived for thousands of years prior to the arrival of Europeans. Archeologists have discovered evidence to support the claim that local Mashpee villages have existed for 5,000 years with an unbroken continuum of habitation to the present. Our extensive history, therefore, is not predicated on the single instance in which our ancestors greeted the Pilgrims as they landed upon the shores of America. Rather, this moment enriched the history of the Mashpee as a community tied to the land on which we have existed for thousands of years. We are proud to have been part of this historically significant event and many since.

Since that meeting our history has been shared with the European settlers. However, our experience has not always lived up to the promise of that first meeting in Plymouth. In fact, our experience with the Bureau of Indian Affairs has only intensified the lingering taste of past oppression. But our commitment to this, our great country, has been and remains steadfast. We are proud to be Americans. We are proud of our country. We have not always been treated with fairness and equality. But, we know ourselves to be a significant tribe tied to the long history of this nation, and we remain firm in our faith in its commitment to justice.

The fight for freedom and development of democracy has been a tumultuous one, often calling for men and women to fight in order to secure liberty. The first casualty of the Revolutionary War, Crispus Attucks, was a member of the Mashpee. Another distinguished Mashpee, Massasoit, stands point on the state seal and flag of the

Commonwealth. In fact, the Mashpee have consistently answered the call to arms, fighting in every American conflict beginning with the fight for independence from England: 21 in the Spanish American War, 145 in World War I, 5 in the Haitian Insurrection, 6 in the Philippine Insurrection, 80 in World War II (including 44 at D-Day), 61 in the Korean War, 30 during the Cuban blockade, 50 in the Vietnam War, 6 at Grenada, 11 in Panama, 13 in Desert Storm and 17 in Afghanistan and the War on Terror. I am joined today by our Chief, Vernon Lopez, who was among the Mashpee fighting at D-Day; I, am a survivor of the siege of Khe Sanh, in Vietnam. Our ties to our community at home compliment our record of service and sacrifice to the country.

Currently, sixty percent of our tribal members live in close proximity to the town of Mashpee. We maintain the oldest Christian church building on the Cape, the Old Indian Meeting House, established in 1673 by John Eliot. Our devotion to the church has earned us the name “Praying Indians,” and presently we use this facility for special occasions of worship. Our services are performed in Algonquin, the official Wampanoag language. Moreover, we assist other tribes in maintaining their traditional languages and customs. Meticulous care is given to preserving the nuances of our cultural traditions with hope of enculturation for subsequent generations. Nevertheless, the lack of a defined tribal land makes preservation of our traditions and cultural identity very difficult to maintain. Our frustration is intensified in the light of our progressive social and legislative history in the Commonwealth of Massachusetts and prior relationship with the federal government.

The significance of Mashpee history in Massachusetts is confirmed in historical texts dating back hundreds of years. As population swelled in states, the idea of westward expansion became a reality. The United States government explored the removal of Indians from eastern states through the endowment of tribal lands in the west in places such as Oklahoma. The shortsighted and thoughtless nature of such proposals aside, such a consideration was rejected when considering the relocation of the Mashpee. A document dating from 1822, A Report to the Secretary of War of the United States on Indian Affairs, states in regard to Mashpee relocation,

“They are of public utility here as expert whalers, and manufacturers of various light articles; have lost their sympathy with their brethren of the forest; are in possession of many privileges, peculiar to a coast, indented by the sea; their local attachments are strong; they are tenacious of their lands; of course the idea of alienating them and removing to a distance, would be very unpopular. This is evident from the feelings manifested by those whom I have sounded on the subject; I have no reason therefore, to believe the scheme would take with them.”¹

Then, the rebuff of Mashpee removal was predicated on our strong ties to the land and sea, as well as our fierce love for the land we have inhabited for so long. Now we seek to have the federal government recognize the Mashpee and acknowledge our history in this

¹ Jedidah Morse, A Report to the Secretary of War of the United States on Indian Affairs (New Haven 1822).

land, a history recognized in texts such as these. Yet, this is not the singular piece of supporting evidence in our case for federal recognition.

The town of Mashpee, Massachusetts was incorporated as a township in 1870 and common land allotted to Indians and non-Indians. Members of our tribe served in all leading roles in the town of Mashpee until 1964, serving the town in governance positions including selectman, as police and firemen, and as municipal officials. During this period, we opened to the public our traditions in hope that others could understand our culture as we had been forced to understand theirs. In 1920 we began the first community powwow, inviting citizens to participate in one of our most sacred customs. Over time, Massachusetts embraced our tribe and, most notably, recognized the Mashpee in statute. In fact, more recently, members of the Massachusetts Legislature submitted a joint resolution supporting federal recognition; “Massachusetts Legislature recommends that the Federal Government follow the Commonwealth’s lead by formally recognizing the Mashpee Wampanoag Tribe.”² And yet, federally we have been unable to gain recognition.

Currently, our main land base consists of 55 tribally leased acres in the town, located near the southwestern end of Cape Cod – a small sliver of the 16,500 acres originally provided by England’s King George II and reaffirmed by Plymouth Colony. In the past we have struggled to survive on the Cape, and continue to do so today. As Cape development reshaped our community and the vacation-based economy boomed, the Mashpee tribal members did not benefit from the growth. One of the fastest growing communities in the State, population soared to almost 13,000 by 2000. Mashpee land continued to shrink and the challenge of retaining our identity grew.

We, as Mashpee, struggle every day to teach our Indian culture, while, concurrently teaching the mores and history of the United States. We find it hard to resolve our history on this land and our dedication to this country with the lack of recognition by the government we helped shape. Thus, in 1932 we began the federal recognition process and rejuvenated our efforts in the 1970s. We have pursued our status in court as well as through the Bureau of Indian Affairs.

The Wampanoags of Mashpee filed a letter of intent with the United States Department of the Interior’s Bureau of Indian Affairs (BIA) in 1975. The BIA’s response was prompt, stating the Mashpee were among the first tribes to be considered for only fourteen others had filed prior to that time. However, at the time the BIA had not adopted any regulations setting forth official criteria for federal recognition of tribes.

In 1978 the Bureau of Indian Affairs had solidified the criteria for achieving federal recognition. Although we understood the process was a long one, taking years, we initiated our formal petition. This process was not complete in full until 1990.

² Joint Resolution Offered by State Representative Matthew C. Patrick, Representative Eric Turkington, Senator Robert O’Leary and Senator Therese Murray.

In 1990, after years of research, the Mashpee submitted its formal application, compiled without the aide of scholars due to our lack of resources. Our lack of scholarly or professional consulting in our application resulted in the BIA reply that there existed obvious deficiencies in our argument that the Wampanoag functioned as a tribal entity throughout the twentieth century. Consequently, under the leadership of Harvard-educated Tribal President, Russell Peters, we went back to work. In 1996 we resubmitted our application, supported by hundreds of pages of documentation and several boxes of vital records. Through the aid of lawyers, archaeologists, genealogists and researchers we meticulously documented our history in the Commonwealth. Less than a month after our second submission, the agency deemed the petition “ready for active consideration.”

Our petition has been ready for active consideration for seven years - since 1996. In that time, other tribes' petitions have jumped our own for consideration. For example, the Muwekma, a tribe which was not on the ready list for consideration until 1998, has already received a ruling. The Department has also entered into settlements placing groups, including the Schaghticoke and Golden Hill Tribes, on expedited schedules for consideration. Moreover, the Department has jumped tribes such as the Pawcatuck Eastern Pequots and the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians of Michigan ahead in order to consider their petition in tandem with similarly situated tribes. In contrast, the Mashpee continue to await a decision to move forward on our petition.

We have followed the rules and regulations put forth by the BIA and its predecessor, the War Department. Despite our best efforts to comply, we remain without any sense of when we can expect completion of our petition or whether the BIA will meet its obligations under the established procedures. Thus, we felt we had no choice but to proceed through the courts. We are presently seeking a court order to force the BIA to process our petition in a timely manner. We believe that we can establish that the delay in processing our petition has been egregiously unreasonable particularly in light of the other tribes whose petitions have been considered before our own.

In 2001, the U.S. District Court for the District of Columbia found the BIA had unreasonably delayed action on the Mashpee petition, and ordered the BIA to make a final finding on the petition by December 21, 2002. The District Court decision was appealed by the BIA to the U.S. Court of Appeals for the D.C. Circuit. In 2003, the Court of Appeals remanded the case back to the District Court “for a full and fresh evaluation of whether the delay Mashpee is encountering should be deemed ‘unreasonable.’” Thus, the case is now pending once again before the District Court.

The Mashpee fully expect to be successful in demonstrating that the BIA has unreasonably delayed action on the Mashpee petition. The petition has been languishing at the BIA for *seven years*. Unless the Court or Congress intervenes, the Mashpee are likely to be waiting *seven to fourteen more years* before receiving a decision. After considering the facts surrounding the Department’s history of delay, its past actions, as well as the fundamental rights and privileges at stake in the tribal recognition process, we believe the District Court will again find that this delay – *with no end in sight* – is egregious and must be remedied.

Tribes which have won court decisions forcing the BIA to review their file have received negative rulings. My worry, as Tribal President, is that the Mashpee will be reprimanded in the form of a negative ruling. Seventeen tribes, winning a legally forced review, have all been denied federal recognition since 1980. Six of those had lower placement on the list for consideration. Five of the denied tribes sought litigation to no avail. Only the Schaghticoke of Connecticut won their suit and received favorable consideration.

It is our contention that the department is adversarial at best. It is difficult for tribes to prove their case for recognition and, furthermore, there exists no readily available clarification of the rules and regulations to improve the process. The BIA only respond when something is wrong, rather than explaining their interpretation of the facts and application of the criteria.

It is not only possible for the consideration process to be improved, but also necessary. Experts have told us that the entire backlog of petitions could be completed in 2 years if the Bureau worked efficiently and with a view toward achieving equitable resolution of the various pending applications. The Mashpee application could be done in a few months given our long history of recognition by the Commonwealth of Massachusetts, substantial shared history with a tribe recognized by the Bureau, and other factors. Yet, the Bureau proceeds, year after year, with no enforced standards, no clear procedures, no commitment to completion and no effort to secure resources to get the job done either internally or through a limited contractual program utilizing the top experts from across the country.

With the aid of scholars and the use of historical archives the timeframe could be truncated considerably. Schools such as Rutgers, University of Virginia and University of Pennsylvania, with well established and respected leaders in the field of Native studies, could review the applications of a number of tribes if each were assigned just two per year.

The lack of communication on behalf of the Bureau of Indian Affairs has been not only frustrating, but also insulting. We feel we have pursued our federal recognition through the proper channels and deserve due process of our claim. We have observed the Bureau's lack of ability to adhere to its rules and regulations; yet, the tribes seeking recognition are made to adhere to said regulations. Capriciously, the BIA has moved forward on the claims of tribes which had submitted their applications significantly after the Mashpee with little or no explanation.

Mr. Chairman, members of the committee, the denial of resolution on our petition carries real consequences for the members of my tribe. We are denied access to health care and many of the other federal benefits that recognition conveys. As a result, like many other native people, we suffer from diseases such as diabetes at levels substantially higher than most populations. More importantly, failure to complete our petition denies

Mashpee tribal members the pride that only recognition of our tribe and its contributions to this country will convey.

Given our record of service to this country, the Mashpee people have earned and deserve better treatment. We have shared our land, shed our blood, and have grown together as part of this nation. Still, we struggle every day to live on the land that has always been our home. We struggle to preserve a history and language that is critical to the telling of the story of America. And, yet, we remain committed to the dream that we have so long been denied, and seek only that to which we are justly entitled.

As a representative of these hardworking, dedicated and proud Mashpee tribal members I respectfully submit these thoughts for your consideration. I would welcome the opportunity to discuss our tribe and our case for federal recognition further or furnish any requests for more information. I thank you for your time and consideration.